

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

ROBERT A. SHEPHERD,

Petitioner,

vs.

LEROY KIRKEGARD; ATTORNEY
GENERAL OF THE STATE OF
MONTANA,

Respondents.

CV 14-55-GF-DLC-JTJ

ORDER

FILED

DEC 23 2015

Clerk, U.S. District Court
District Of Montana
Missoula

United States Magistrate Judge John T. Johnston entered Findings and Recommendations on August 5, 2015, recommending dismissing Petitioner Robert A. Shepherd's ("Shepherd") Petition for Writ of Habeas Corpus. This Court previously granted two requests by Shepherd for extensions of time to file objections to Judge Johnston's Findings and Recommendations. (Docs. 29, 33.) Shepherd failed to timely object to the Findings and Recommendations, and so waived his right to de novo review of the record. 28 U.S.C. § 636(b)(1)(C). This Court reviews for clear error those findings and recommendations to which no party objects. *See McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Clear

error exists if the Court is left with a “definite and firm conviction that a mistake has been committed.” *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000) (citations omitted).

Having reviewed the Findings and Recommendations, the Court finds no clear error in Judge Johnston’s conclusion that: (1) Shepherd’s claims are time barred without excuse; (2) Shepherd has failed to make an adequate showing of innocence to enable his claims to be heard on the merits; and (3) Shepherd has failed to make an adequate showing of innocence to excuse his procedural default.

There being no clear error in Judge Johnston’s Findings and Recommendations, IT IS ORDERED that:

(1) Judge Johnston’s Findings and Recommendations (Doc. 26) are ADOPTED IN FULL.

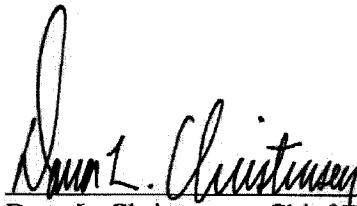
(2) Shepherd’s Petition for Writ of Habeas Corpus (Doc. 1) is DISMISSED WITH PREJUDICE.

(3) All pending motions (Docs. 28, 30, 34, and 35) are DISMISSED as moot.

(4) The Clerk of Court is directed to enter, by separate document, a judgment of dismissal.

(5) A certificate of appealability is DENIED.

Dated this 23rd day of December, 2015.

A handwritten signature in black ink, appearing to read "Dana L. Christensen", written over a horizontal line.

Dana L. Christensen, Chief District Judge
United States District Court